

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24128 OF 2005

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ORAL ORDER:

This Writ Petition is filed seeking a writ of certiorari calling for records relating to the order dated 6.10.2005 in C.M.A.No.19 of 2005 on the file of the Court of the II Additional District & Sessions Judge (Fast Track Court), Srikakulam, and to quash the same being contrary to the provisions of the A.P. Forest Act, 1967.

The facts, in brief, are as follows:

Respondent herein claims to be the owner of the vehicle bearing Registration No.AP 30 T 6648. On 23.08.2004, the Forest Section Officer, Balarampuram Section intercepted the said vehicle near Kudavanipeta village and seized the same along with splitted Casurina Fire Wood being transported in it. A case under the provisions of the A.P. Forest Act, 1967 (for short "the Act") and Rules of the Andhra Pradesh Forest Produce Transit Rules, 1970 (for short "the Rules") was registered and the vehicle together with casurina fire wood was produced before the authorized officer – Divisional Forest Officer, Srikakulam. Thereafter, a show cause notice dated 23.09.2004 was issued to the respondent calling upon him to show cause as to why the vehicle involved in forest offence should not be confiscated under Section 44(2-A) of the Act. The respondent submitted his explanation stating that he being an educated unemployeed purchased the vehicle in question for his livelihood in which he is transporting vegetables and other material. It is also stated that on 23.08.2004 he had been to Eluru and the driver, who was idle, took the vehicle on hire by one Ippili Appanna and another for Rs.300/- to transport splitted casurina from Kunduvanipeta to Srikakulam and while loading the produce, the Forest Range Officer, Srikakulam seized the same. It is also pleaded that he had no knowledge about the incident and at the time of the incident he was away at Eluru. At any rate, since the alleged offence was committed by his driver, he undertook to pay the compounding fee and make a request to compound the offence.

However, the Divisional Forest Officer, Srikakulam did not accept the said

explanation and by order dated 9.10.2004 ordered confiscation of the vehicle in question along with casurina fire wood under Section 44(2-A) of the Act. Aggrieved by the said order, the respondent preferred a statutory appeal in C.M.A.No.19 of 2005 in the Court of the II Additional District Judge (Fast Track Court), Srikakulam, which was allowed by order dated 6.10.2005, thereby setting aside the order of confiscation dated 9.10.2004 to the extent of the vehicle in question. Aggrieved by the said order, the present writ petition has been filed by the officials of the Forest Department.

I have heard the learned Government Pleader appearing for the petitioners and the learned counsel appearing for the respondent.

Learned Government Pleader contended that the fact that the owner of the vehicle himself had come forward for getting the offence compounded itself shows that the vehicle was deliberately used in the commission of forest offence with the knowledge of the owner. It is also contended that since the Divisional Forest Officer conducted enquiry following due process of law, and afforded reasonable opportunity to the owner of the vehicle against the proposed confiscation, there is absolutely no justifiable reason to interfere with the finding that a forest offence was committed. It is also contended that the learned Additional District Judge had no authority or jurisdiction to entertain the appeal against confiscation of the vehicle in view of the amended Act 17 of 1976.

From the material on record, it is not in dispute that the vehicle in question was seized on 23.08.2004 while transporting casurina fire wood from Kunduvanipeta village to Srikakulam. It is alleged that the driver of the vehicle could not produce any certificate or permit to transport casurina fire wood, and therefore, transportation of casurina fire wood, which is a forest produce, was illegal.

As directed by the Divisional Forest Officer, the Forest Range Officer, Srikakulam submitted report dated 15.10.2004 stating that during enquiry it was found that 4.5 cmt splitted fire wood was removed from 1998 SB casurina plantation of Balarampuram Section raised by P & E Division, Srikakulam. Basing on the said report, proceedings were initiated under Section 44 of the Act and a show cause notice dated 23.09.2004 was issued by the Divisional Forest Officer, Srikakulam calling upon the respondent to show cause as to why the vehicle in question involved in the forest offence should not be confiscated under Section 44(2-A) of the

Act.

The respondent/owner submitted his explanation stating that he being an educated unemployed, purchased the vehicle in question for his livelihood in which he is transporting vegetables and other material. It is also stated that on 23.08.2004 he had been to Eluru and the driver, who was idle, took the vehicle on hire by one Ippili Appanna and another for Rs.300/- to transport splitted casurina from Kunduvanipeta to Srikakulam and while loading the produce, the Forest Range Officer, Srikakulam seized the same. It is also pleaded that he had no knowledge about the incident and at the time of the incident he was away at Eluru.

As noted above, the respondent/owner submitted his explanation denying the allegations and stating that he had no knowledge about the alleged forest offence, and as a matter of fact, the vehicle was hired to one Ippili Appanna on payment of hire charges of Rs.300/-. Though the Divisional Forest Officer ordered confiscation of the vehicle in question, holding that she was satisfied that a forest offence was committed, the order of confiscation dated 7.10.2004 shows that the Divisional Forest Officer had merely relied upon the report of the Forest Range Officer dated 5.10.2004. However, on appeal preferred under sub-section (2-E) of Section 44 of the Act, the learned Additional District Judge, did not accept the said conclusion of the Divisional Forest Officer, and held that the owner of the lorry could not be made liable in the absence of any element of connivance.

On a careful consideration of the material on record as well as the well-reasoned order passed by the learned Additional District Judge in C.M.A.No.19 of 2005, I do not find any justifiable reason to interfere with the finding of fact recorded by the learned Additional District Judge. As noted above, the Divisional Forest Officer while directing confiscation failed to apply her mind to the relevant factors, particularly the explanation offered by the respondent/owner of the vehicle, but merely proceeded on the basis of the seizure report. In the circumstances, I am of the opinion that the learned Additional District Judge had rightly set aside the order of confiscation holding that in the absence of any clinching material to establish knowledge of the offence on the part of the owner, confiscation of the vehicle cannot be sustained.

That apart, it is relevant to note that under Section 44(2-A) of the Act, confiscation of the seized timber or forest produce together with vehicle may be

ordered only where the Forest Officer is satisfied that a **forest offence** has been committed in respect thereof.

Forest offence has been defined under Section 2(e) of the Act as an offence punishable under the Act or any rule made thereunder.

In the case on hand, in the show cause notice dated 23.09.2004 it was alleged that a case was registered against the vehicle in question for an offence punishable under Rules 3 and 4 of the Rules.

Under Rule 3 of the Rules, no forest produce shall be moved into or from or within the State, unless such produce is accompanied by a permit therefor, issued under Rule 5 and produced for check immediately on demand.

Rule 4 prohibits movement of timber exceeding 25 cms in girth at its thickest part and one meter in length, except timber sawn into sizes, unless such timber bears a distinguishable Government transit mark of such description as mentioned in the permit authorizing the transit thereof accompanying the said timber.

The allegation in the case on hand is that the vehicle in question was transporting casurina stem wood without accompanied by permit as required under Rules 3 and 4 of the Rules.

However, the learned counsel for the respondent contended that the said rules are not applicable to casurina stem wood since it is an exempted class of timber under Rule 16 of the Rules. Thus the learned counsel submits that even assuming that the driver of the vehicle in question failed to produce the permit for transportation of the casurina stem wood, it does not constitute a forest offence, and therefore, the vehicle in question cannot be confiscated.

Rule 16 of the Rules runs as under:

“These rules shall not apply to red-sanders and sandal wood and such classes of timber firewood and other forest produce and in such areas as are specified in Schedule II and III.”

Item (iii) of column (4) of Schedule II makes it clear that Casurina, Sarugudu, Sarvi, Saru, are one of the classes of timber which are exempted from the applicability of the rules in all Revenue Districts in the State. Thus, it is clear that even assuming that casurina fire wood was being transported in the vehicle in

question without possessing permit as required under Rules 3 and 4 of the Rules, it cannot be held to be a forest offence within the meaning of Section 2(e) of the Act. Once it is not a forest offence, confiscation under Section 44 of the Act is impermissible. Since admittedly, the Divisional Forest Officer failed to take into consideration the said aspect, I am of the opinion that the order of confiscation of the vehicle in question was erroneous on that ground also.

The contention of the learned Government Pleader appearing for the petitioners that the learned Additional District Judge has no jurisdiction to entertain the appeal is also untenable, since sub-section (2-E) of Section 44 of the Act, which was inserted by A.P. Act 17 of 1976, provides that any person aggrieved by an order passed under sub-section (2-A) of Section 44, may appeal to the District Court having jurisdiction over the area in which the property has been seized. Hence, the appeal in the District Court was rightly entertained and decided by the learned Additional District Judge.

For the aforesaid reasons, the Judgment of the learned II Additional District Judge in C.M.A.No.19 of 2005 dated 6.10.2005 setting aside the confiscation ordered by the Divisional Forest Officer,

Srikakulam, does not suffer from any infirmity warranting interference by this Court. Accordingly, the Writ Petition is dismissed. No costs.

(G. ROHINI, J.)

April 10, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24128 OF 2005

10th April, 2006.

Between:

The Forest Range Officer, Tekkali and
two others. .. Petitioners.

And

Ch. Jyothi Prakash. .. Respondent.